

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DIRK M. BEYER, FEREYDOON SAFAI, and FARID ARTSALIA

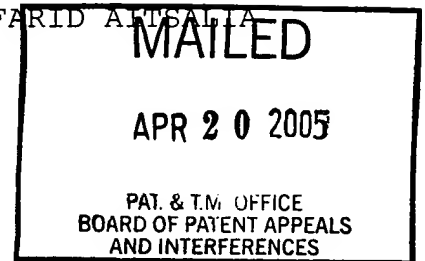
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Appeal No. 2005-0573  
Application No. 09/626,191

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ON BRIEF

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Before THOMAS, HAIRSTON, and BARRETT, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 1 through 5, 8 through 10, 12, 13 and

15. Representative claim 1 is reproduced below:

1. A product demand forecasting system, comprising

a profile extractor that generates a demand profile of a new product yet to be introduced based on demand profiles of similar products already introduced, wherein the profile extractor normalizes and averages the demand profiles of the similar products to obtain the demand profile of the new product;

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a life-cycle demand predictor that generates a total life-cycle demand of the new product based on historical demand data of the similar products;

a forecast creator coupled to the profile extractor and the demand predictor to generate a life-cycle demand forecast for the new product based on the demand profile and total life-cycle demand of the new product; and

a future demand extrapolation module coupled to the forecast created to extrapolate the total life-cycle demand of the new product by calculating an average demand per time period of each of the similar products, associating each average demand per time period with a date that represents a midpoint of the life-cycle of each similar product, and calculating an estimate of the average demand per time period at the date of the midpoint of the life-cycle of the new product.

The following references are relied on by the examiner:

Marrying Mathematical Precision and Merchandising Intuition to Maximize Gross Profit, at <http://web.archive.org/web/20000302140513/http://www.grossprofit.com/> (last visited Jun. 9, 2003) (TSI, Inc., 1999) (hereinafter referred to as reference "A").

Ackerman, Looking Back to Fashion's Future: Firm Helps Retailers Develop Merchandising Plans, at <http://web.archive.org/web/20000518100515/www.grossprofit.com/pages/globeoct98.html> (last visited Jun. 9, 2003) (The Boston Globe, Oct. 7, 1998, TSI, Inc. 1999) (hereinafter referred to as reference "B").

Koloszyc, Merchants Try Complex Mathematical Tools to Improve Inventory Decisions - Gymboree uses models to maintain the right inventory levels and determine the timing and percentages of markdowns, at <http://web.archive.org/web/20000524170655/www.grossprofit.com/pages/stores1198.html> (last visited Jun. 9, 2003) (Store Magazine, Nov. 1998, TSI, Inc. 1999) (hereinafter referred to as reference "C").

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Claims 1 through 5, 8 through 10, 12, 13 and 15 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon TSI's references A through C.

Rather than repeat the positions of the appellants and the examiner, reference is made to the brief and reply brief for appellants' positions, and to the answer for the examiner's positions.

#### OPINION

Since we are in general agreement with the appellants' positions in the brief and reply brief, we conclude that the examiner has failed to set forth a prima facie case of obviousness of the subject matter in representative claims 1 and 10 on appeal. Therefore, the rejection of all claims on appeal under 35 U.S.C. § 103 is reversed.

The examiner's statements of the rejection of independent claims 1 and 10 on appeal set forth in detail the corresponding teachings and suggestions of the three references relied upon respectfully at pages 7 and 15 of the answer. The examiner admits that the references do not specifically or expressly disclose the feature of "normalizes and averages the demand profiles" as set forth in the initial clause in the body of representative claim 1 on appeal and also recognizes that the

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references do not specifically teach the subject matter of the feature demand extrapolation module set forth at the end of this claim. These are the same features which appellants argue in the brief and reply brief that are not specifically taught or suggested.

The examiner's rationale to make up for these admitted differences at pages 7-8 and 15-16 of the answer present for our consideration only arguments without any supporting evidence in the form of additional applied prior art on which to base the examiner's assertion of what is well known in the prior art. The examiner's positions appear to us to be based upon mere speculation and perhaps prohibited hindsight analysis.

For their part, appellants assert at the bottom of page 4 of the answer that the examiner incorrectly asserts that the questioned features that are claimed would have been obvious in view of the three TSI references which make only broad statements relating to the general subject matter of the claims on appeal. We agree also with the appellants' general observation at the top of page 6 of the principal brief on appeal:

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In summary, the TSI references cited by the Examiner do not specifically teach or suggest the above described features of claim 1 and do not clearly state how the forecasting, inventory calculation, and pricing provided by TSI is accomplished other than brief statements such as those cited above. At most, the TSI references teach an inventory and pricing forecast system that does not include the features of Applicants' claimed invention and functions in a manner that is significantly different from Applicants' claimed invention.

What follows in the brief and the substance of the reply brief as well as the responsive arguments in the answer beginning at the bottom of page 16 is a dialogue between the examiner and appellants which we may fairly characterize as arguments about arguments which, in their broadest perspective, emphasize the deficiencies and weaknesses in the examiner's conclusion of obviousness. The examiner's additional reliance upon the Mendenhall reference at the top of page 18 of the answer is misplaced since this reference has not been made a part of the statement of rejection of the claims on appeal. As such, we have not considered it in our deliberations.

What the examiner has generally failed to recognize is that the context of the subject matter of claim 1 on appeal requires "a demand profile of a new product yet to be introduced." The succeeding references to "the new product" in representative claim 1 on appeal refer back to this initial recitation in the

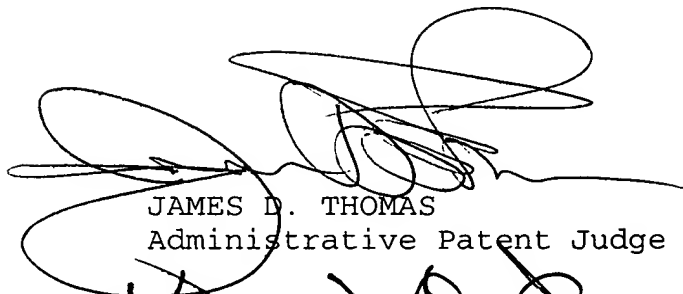

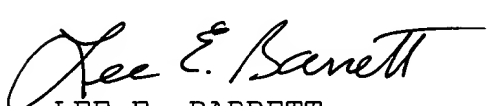
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profile extractor clause of claim 1. Even if we were in some manner persuaded to agree with the examiner's positions set forth in the answer, it appears that the only persuasive teaching among the three references relied upon by the examiner relating to new products is the discussion at the top of page 3 of reference C relating to product life cycles. A studied consideration of the discussion here leads us to conclude that it appears to only relate to new products that have actually been introduced into the marketplace rather than the required new products yet to be introduced as required in the context of the claims on appeal.

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In view of the forgoing, the decision of the examiner  
rejecting the claims on appeal within 35 U.S.C. § 103 is  
reversed.

REVERSED

  
JAMES D. THOMAS )  
Administrative Patent Judge )  
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KENNETH W. HAIRSTON )  
Administrative Patent Judge )  
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LEE E. BARRETT )  
Administrative Patent Judge )

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